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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/527,935	04/24/2006	Pawel Drabarek	10191/4148	2374
26646	7590	01/10/2008	EXAMINER	
KENYON & KENYON LLP			LEE, HWA S	
ONE BROADWAY			ART UNIT	
NEW YORK, NY 10004			PAPER NUMBER	
			2886	
			MAIL DATE	DELIVERY MODE
			01/10/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

TH

Office Action Summary

Application No.

10/527,935

Applicant(s)

DRABAREK ET AL.

Examiner

Andrew Hwa S. Lee

Art Unit

2886

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 March 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 11-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 11-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>3/16/05</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

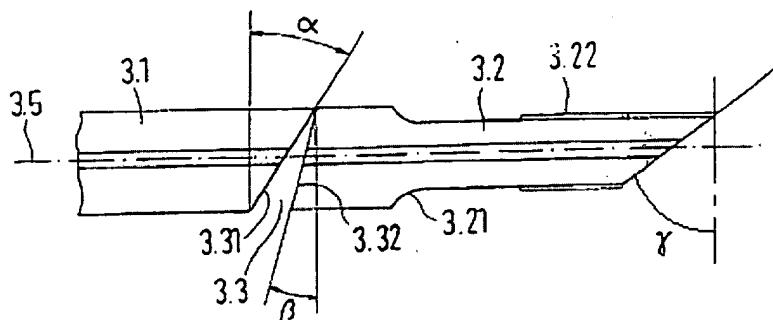
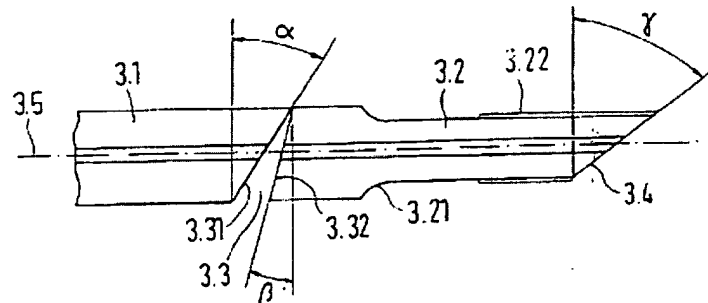
Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

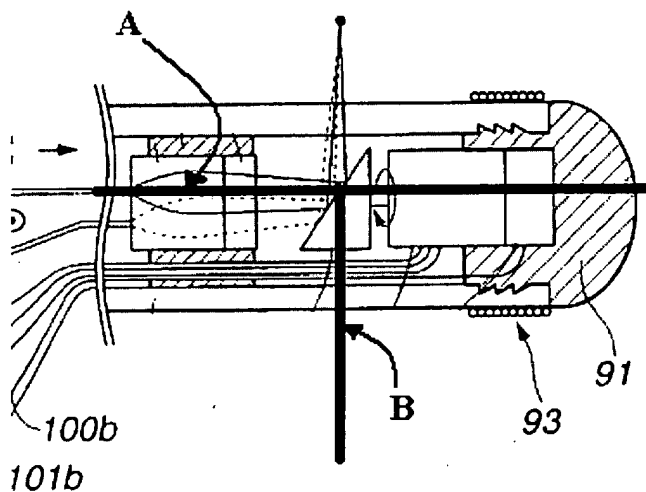
The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 11-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

- a. The recitation of "an angle of inclination of the exit surface to the normal of an optical probe axis of the probe-optical fiber unit" in claim 11 is indefinite. The recitation is indefinite in that there are at least two possible ways of determining the claimed angle as shown in the figures below:



- b. The recitation, “a probe-optical fiber unit having a slantwise exit surface” is unclear which exit surface is being referred to. Surface 3.31 3.4 are shown to be exit surfaces in Figure 4.
- c. The recitations “slantwise” in claim 1 and “jacket-like” in claim 13 are indefinite.
3. Claims 11-20 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections. See MPEP § 2172.01. The omitted structural cooperative relationships are: There are multiple axis of a probe, and the claim does not specify clearly which is being referred to. There is at least an axis along the length of the optical fiber and there is an axis for the exit of the probe. Please see the figure below showing the axis (A) along the length of the optical fiber and an axis (B) for the beam at the exit of the probe of a prior art.



Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 11-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Drabarek (US 6,741,355) in view of Tearney et al (US 6,134,003).

Drabarek shows a short coherence fiber probe interferometer comprising the radiation source, modulation interferometer, a measuring probe, receiver device, and evaluation device as claimed, but does not expressly show the probe having the exit surface of at least 46 degrees.

Tearney et al (Tearney hereinafter) show a short coherence interferometer having a probe with an exit surface 1158 that has an angle that is variable including an angle of at least 48 degrees. At the time of the invention, one of ordinary skill in the art would have modified the interferometer of Drabarek to with the probe of Tearney in order to have the range and flexibility of measuring the sample area.

With respect to claim 13, Tearney shows a jacket-like covering 80, 84, and teaches the use of antireflective coatings to reduce spurious reflections, therefore, at the time of the

invention, one of ordinary skill in the art would have used antireflection coatings on the jacket-like coverings.

With respect to claim 14, exit surface 1158 is a mirror.

With respect to claim 20, Official Notice is taken that the use of polarization maintaining fiber is well known to be used in a modulating interferometer and at the time of the invention, one of ordinary skill in the art would have used a polarization maintaining fiber in order to reduce the amount of light lost.

Information Disclosure Statement

6. The information disclosure statement filed 3/16/05 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each cited foreign patent document; each non-patent literature publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has not been considered.

Allowable Subject Matter

7. Claims 15-19 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrew Hwa S. Lee whose telephone number is 571-272-2419. The examiner can normally be reached on Tue-Fr.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tarifur R. Chowdhury can be reached on 571-272-2800. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Andrew Hwa S. Lee
Primary Examiner
Art Unit 2886